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DIVISION 3. OBLIGATIONS [1427 - 3273.69] (*Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14.)*

PART 4. OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS [1738 - 3273.69] (*Part 4 enacted 1872.)*

TITLE 1.81.47. The California Age-Appropriate Design Code Act [1798.99.28 - 1798.99.40] (*Title 1.81.47 added by Stats. 2022, Ch. 320, Sec. 2.)*

1798.99.28. This title shall be known, and may be cited, as the California Age-Appropriate Design Code Act.

(*Added by Stats. 2022, Ch. 320, Sec. 2. (AB 2273) Effective January 1, 2023.*)

1798.99.29. The Legislature declares that children should be afforded protections not only by online products and services specifically directed at them but by all online products and services they are likely to access and makes the following findings:

- (a) Businesses that develop and provide online services, products, or features that children are likely to access should consider the best interests of children when designing, developing, and providing that online service, product, or feature.
- (b) If a conflict arises between commercial interests and the best interests of children, companies should prioritize the privacy, safety, and well-being of children over commercial interests.

(*Added by Stats. 2022, Ch. 320, Sec. 2. (AB 2273) Effective January 1, 2023.*)

1798.99.30. (a) For purposes of this title, the definitions in Section 1798.140 shall apply unless otherwise specified in this title.

(b) For the purposes of this title:

- (1) "Child" or "children," unless otherwise specified, means a consumer or consumers who are under 18 years of age.
- (2) "Data Protection Impact Assessment" means a systematic survey to assess and mitigate risks that arise from the data management practices of the business to children who are reasonably likely to access the online service, product, or feature at issue that arises from the provision of that online service, product, or feature.
- (3) "Default" means a preselected option adopted by the business for the online service, product, or feature.
- (4) "Likely to be accessed by children" means it is reasonable to expect, based on the following indicators, that the online service, product, or feature would be accessed by children:
 - (A) The online service, product, or feature is directed to children as defined by the Children's Online Privacy Protection Act (15 U.S.C. Sec. 6501 et seq.).
 - (B) The online service, product, or feature is determined, based on competent and reliable evidence regarding audience composition, to be routinely accessed by a significant number of children.
 - (C) An online service, product, or feature with advertisements marketed to children.
 - (D) An online service, product, or feature that is substantially similar or the same as an online service, product, or feature subject to subparagraph (B).
 - (E) An online service, product, or feature that has design elements that are known to be of interest to children, including, but not limited to, games, cartoons, music, and celebrities who appeal to children.

(F) A significant amount of the audience of the online service, product, or feature is determined, based on internal company research, to be children.

(5) "Online service, product, or feature" does not mean any of the following:

(A) A broadband internet access service, as defined in Section 3100.

(B) A telecommunications service, as defined in Section 153 of Title 47 of the United States Code.

(C) The delivery or use of a physical product.

(6) "Profiling" means any form of automated processing of personal information that uses personal information to evaluate certain aspects relating to a natural person, including analyzing or predicting aspects concerning a natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behavior, location, or movements.

(Added by Stats. 2022, Ch. 320, Sec. 2. (AB 2273) Effective January 1, 2023.)

1798.99.31. (a) A business that provides an online service, product, or feature likely to be accessed by children shall take all of the following actions:

(1) (A) Before any new online services, products, or features are offered to the public, complete a Data Protection Impact Assessment for any online service, product, or feature likely to be accessed by children and maintain documentation of this assessment as long as the online service, product, or feature is likely to be accessed by children. A business shall biennially review all Data Protection Impact Assessments.

(B) The Data Protection Impact Assessment required by this paragraph shall identify the purpose of the online service, product, or feature, how it uses children's personal information, and the risks of material detriment to children that arise from the data management practices of the business. The Data Protection Impact Assessment shall address, to the extent applicable, all of the following:

(i) Whether the design of the online product, service, or feature could harm children, including by exposing children to harmful, or potentially harmful, content on the online product, service, or feature.

(ii) Whether the design of the online product, service, or feature could lead to children experiencing or being targeted by harmful, or potentially harmful, contacts on the online product, service, or feature.

(iii) Whether the design of the online product, service, or feature could permit children to witness, participate in, or be subject to harmful, or potentially harmful, conduct on the online product, service, or feature.

(iv) Whether the design of the online product, service, or feature could allow children to be party to or exploited by a harmful, or potentially harmful, contact on the online product, service, or feature.

(v) Whether algorithms used by the online product, service, or feature could harm children.

(vi) Whether targeted advertising systems used by the online product, service, or feature could harm children.

(vii) Whether and how the online product, service, or feature uses system design features to increase, sustain, or extend use of the online product, service, or feature by children, including the automatic playing of media, rewards for time spent, and notifications.

(viii) Whether, how, and for what purpose the online product, service, or feature collects or processes sensitive personal information of children.

(2) Document any risk of material detriment to children that arises from the data management practices of the business identified in the Data Protection Impact Assessment required by paragraph (1) and create a timed plan to mitigate or eliminate the risk before the online service, product, or feature is accessed by children.

(3) Within three business days of a written request by the Attorney General, provide to the Attorney General a list of all Data Protection Impact Assessments the business has completed.

(4) (A) For any Data Protection Impact Assessment completed pursuant to paragraph (1), make the Data Protection Impact Assessment available, within five business days, to the Attorney General pursuant to a written request.

(B) Notwithstanding any other law, a Data Protection Impact Assessment is protected as confidential and shall be exempt from public disclosure, including under the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code).

(C) To the extent any information contained in a Data Protection Impact Assessment disclosed to the Attorney General includes information subject to attorney-client privilege or work product protection, disclosure pursuant to this paragraph shall not constitute a waiver of that privilege or protection.

(5) Estimate the age of child users with a reasonable level of certainty appropriate to the risks that arise from the data management practices of the business or apply the privacy and data protections afforded to children to all consumers.

(6) Configure all default privacy settings provided to children by the online service, product, or feature to settings that offer a high level of privacy, unless the business can demonstrate a compelling reason that a different setting is in the best interests of children.

(7) Provide any privacy information, terms of service, policies, and community standards concisely, prominently, and using clear language suited to the age of children likely to access that online service, product, or feature.

(8) If the online service, product, or feature allows the child's parent, guardian, or any other consumer to monitor the child's online activity or track the child's location, provide an obvious signal to the child when the child is being monitored or tracked.

(9) Enforce published terms, policies, and community standards established by the business, including, but not limited to, privacy policies and those concerning children.

(10) Provide prominent, accessible, and responsive tools to help children, or if applicable their parents or guardians, exercise their privacy rights and report concerns.

(b) A business that provides an online service, product, or feature likely to be accessed by children shall not take any of the following actions:

(1) Use the personal information of any child in a way that the business knows, or has reason to know, is materially detrimental to the physical health, mental health, or well-being of a child.

(2) Profile a child by default unless both of the following criteria are met:

(A) The business can demonstrate it has appropriate safeguards in place to protect children.

(B) Either of the following is true:

(i) Profiling is necessary to provide the online service, product, or feature requested and only with respect to the aspects of the online service, product, or feature with which the child is actively and knowingly engaged.

(ii) The business can demonstrate a compelling reason that profiling is in the best interests of children.

(3) Collect, sell, share, or retain any personal information that is not necessary to provide an online service, product, or feature with which a child is actively and knowingly engaged, or as described in subparagraphs (A) to (D), inclusive, of paragraph (1) of subdivision (a) of Section 1798.145, unless the business can demonstrate a compelling reason that the collecting, selling, sharing, or retaining of the personal information is in the best interests of children likely to access the online service, product, or feature.

(4) If the end user is a child, use personal information for any reason other than a reason for which that personal information was collected, unless the business can demonstrate a compelling reason that use of the personal information is in the best interests of children.

(5) Collect, sell, or share any precise geolocation information of children by default unless the collection of that precise geolocation information is strictly necessary for the business to provide the service, product, or feature requested and then only for the limited time that the collection of precise geolocation information is necessary to provide the service, product, or feature.

(6) Collect any precise geolocation information of a child without providing an obvious sign to the child for the duration of that collection that precise geolocation information is being collected.

(7) Use dark patterns to lead or encourage children to provide personal information beyond what is reasonably expected to provide that online service, product, or feature to forego privacy protections, or to take any action that the business knows, or has reason to know, is materially detrimental to the child's physical health, mental health, or well-being.

(8) Use any personal information collected to estimate age or age range for any other purpose or retain that personal information longer than necessary to estimate age. Age assurance shall be proportionate to the risks and data practice of an online service,

product, or feature.

(c) (1) A Data Protection Impact Assessment conducted by a business for the purpose of compliance with any other law complies with this section if the Data Protection Impact Assessment meets the requirements of this title.

(2) A single data protection impact assessment may contain multiple similar processing operations that present similar risks only if each relevant online service, product, or feature is addressed.

(d) This section shall become operative on July 1, 2024.

(Amended by Stats. 2024, Ch. 80, Sec. 21. (SB 1525) Effective January 1, 2025.)

1798.99.32. (a) The California Children's Data Protection Working Group is hereby created within the Office of the Attorney General to deliver a report to the Legislature, pursuant to subdivision (e), regarding best practices for the implementation of this title.

(b) Working group members shall consist of Californians with expertise in at least two of the following areas:

(1) Children's data privacy.

(2) Physical health.

(3) Mental health and well-being.

(4) Computer science.

(5) Children's rights.

(c) The working group shall select a chair and a vice chair from among its members and shall consist of the following nine members:

(1) Two appointees by the Governor.

(2) Two appointees by the President Pro Tempore of the Senate.

(3) Two appointees by the Speaker of the Assembly.

(4) Two appointees by the Attorney General.

(5) One appointee by the California Privacy Protection Agency.

(d) The working group shall take input from a broad range of stakeholders, including from academia, consumer advocacy groups, and small, medium, and large businesses affected by data privacy policies and shall make recommendations to the Legislature on best practices regarding, at minimum, all of the following:

(1) Identifying online services, products, or features likely to be accessed by children.

(2) Evaluating and prioritizing the best interests of children with respect to their privacy, physical health, and mental health and well-being and evaluating how those interests may be furthered by the design, development, and implementation of an online service, product, or feature.

(3) Ensuring that age assurance methods used by businesses that provide online services, products, or features likely to be accessed by children are proportionate to the risks that arise from the data management practices of the business, privacy protective, and minimally invasive.

(4) Assessing and mitigating risks to children that arise from the use of an online service, product, or feature.

(5) Publishing privacy information, policies, and standards in concise, clear language suited for the age of children likely to access an online service, product, or feature.

(6) How the working group and the Department of Justice may leverage the substantial and growing expertise of the California Privacy Protection Agency in the long-term development of data privacy policies that affect the privacy, rights, and safety of children online.

(e) On or before July 1, 2024, and every two years thereafter, the working group shall submit, pursuant to Section 9795 of the Government Code, a report to the Legislature regarding the recommendations described in subdivision (d).

(f) A meeting of the members of the working group may be conducted, in whole or in part, by electronic transmission, electronic video screen communication, conference telephone, or other means of remote communication.

(g) The members of the working group shall serve without compensation but shall be reimbursed for all necessary expenses actually incurred in the performance of their duties.

(h) This section shall remain in effect until January 1, 2030, and as of that date is repealed.

(Amended by Stats. 2023, Ch. 45, Sec. 1. (AB 127) Effective July 10, 2023. Repealed as of January 1, 2030, by its own provisions.)

1798.99.33. (a) A business shall complete a Data Protection Impact Assessment on or before July 1, 2024, for any online service, product, or feature likely to be accessed by children offered to the public before July 1, 2024.

(b) This section does not apply to an online service, product, or feature that is not offered to the public on or after July 1, 2024.

(Added by Stats. 2022, Ch. 320, Sec. 2. (AB 2273) Effective January 1, 2023.)

1798.99.35. (a) Any business that violates this title shall be subject to an injunction and liable for a civil penalty of not more than two thousand five hundred dollars (\$2,500) per affected child for each negligent violation or not more than seven thousand five hundred dollars (\$7,500) per affected child for each intentional violation, which shall be assessed and recovered only in a civil action brought in the name of the people of the State of California by the Attorney General.

(b) Any penalties, fees, and expenses recovered in an action brought under this title shall be deposited in the Consumer Privacy Fund, created within the General Fund pursuant to subdivision (a) of Section 1798.160, with the intent that they be used to fully offset costs incurred by the Attorney General in connection with this title.

(c) (1) If a business is in substantial compliance with the requirements of paragraphs (1) through (4), inclusive, of subdivision (a) of Section 1798.99.31, the Attorney General shall provide written notice to the business, before initiating an action under this title, identifying the specific provisions of this title that the Attorney General alleges have been or are being violated.

(2) If, within 90 days of the notice required by this subdivision, the business cures any noticed violation and provides the Attorney General a written statement that the alleged violations have been cured, and sufficient measures have been taken to prevent future violations, the business shall not be liable for a civil penalty for any violation cured pursuant to this subdivision.

(d) Nothing in this title shall be interpreted to serve as the basis for a private right of action under this title or any other law.

(e) The Attorney General may solicit broad public participation and adopt regulations to clarify the requirements of this title.

(Added by Stats. 2022, Ch. 320, Sec. 2. (AB 2273) Effective January 1, 2023.)

1798.99.40. This title does not apply to the information or entities described in subdivision (c) of Section 1798.145.

(Added by Stats. 2022, Ch. 320, Sec. 2. (AB 2273) Effective January 1, 2023.)